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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 4087 of 2006

Date of decision: 27.8.2007

Jai Narain **...Petitioner**

Versus

Satya Narain and others **...Respondents**

CORAM: HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr. A.K.Jain, Advocate for the petitioner.

Mr. S.K.Jain, Advocate for the respondents

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RAJESH BINDAL, J.

Challenge in the present petition, filed under Article 227 of the Constitution of India is to the order dated July 24, 2006 passed by Additional Civil Judge (Senior Division), Jind disallowing the plaintiff to lead evidence in rebuttal on the issues, the onus of which were on defendants.

Briefly the facts are that the plaintiff alongwith proforma respondents no.3 and 4 filed a suit for declaration to the effect that he is adopted son of Lakhi son of Udami and is joint owner in possession of equal share of land measuring 25 kanals 16 marlas comprised in Khewat No.35, Khatoni No.80 and that he is owner in possession to the extent of 1/3rd share of the land measuring 1 kanal 6 marla comprised in Khewat No.33 Khatoni No.79 situated in revenue estate of village Sirsa Kheri, Tehsil and District Jind and further that will dated September 18, 1990 executed by deceased Chet Ram in favour of respondent no.1 is fabricated, illegal, null and void being based on fraud and misrepresentation and also that mutation **No.** 408 dated 18.5.1998 is also null and void.

The claim made by the petitioner was contested by respondent no.1

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stating therein that he is not adopted son of Lakhi son of Udmi and sought a declaration to the effect that he is owner in possession of the land.

As many as 13 issues, arising out of the pleadings of the parties were framed. The onus of following two issues at Serial No.5 and 12 was on the defendants:-

> "5. Whether the plaintiff no.1 is not adopted son of Lakhi son of Udmi, if so, to what effect ?OPD-1
>
> 12. Whether the mutation of inheritance of estate of Lakhi in favour of plaintiff no.1 is illegal, null and void, not binding on defendant no.1, as alleged in counter claim ? OPD-1"

While closing his evidence, plaintiff reserved his right to lead evidence in rebuttal on issues No.5 and 12 as is evident from the order passed by the Court below dated March 25, 2004. After close of the evidence by the defendants, plaintiff submitted affidavits of Smt. Kelo and Ram Dia in rebuttal evidence on issues No.5 and 12, however, on an objection being raised by the respondents/defendants the learned Court below permitted the petitioner to lead evidence in rebuttal only on the question of execution of will and rejected on other two issues.

Substantiating his plea, learned counsel for the petitioner submitted that issues No.5 and 12 in the suit were framed on the basis of contentions raised by defendants in the counter claim filed by them and in that event the defendants stepped into the shoes of the plaintiff for that purpose and whatever evidence is led by the defendants, the plaintiff does have a right to rebut the same after the evidence of the defendants is closed. Still further, he submitted that at the time of closing of his evidence, the plaintiff/petitioner being vigilant about his right had infact reserved his right to lead evidence in rebuttal on issues No. 5 and 12. He submitted that evidence which is to be led by the plaintiff/petitioner in rebuttal on issues No. 5 and 12 is necessary for just and proper adjudication of the dispute between the parties. The technicalities, if any, should not defeat the substantial justice as the same are subservient to the cause of justice. Still further it is submitted that in case the petitioner had summoned a witness in support of his pleadings to prove the issues, the onus whereof was on him,

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and if any question was put to him which incidentally relate to the issues, the onus whereof is on the defendants the same will not mean that plaintiff had started leading evidence on those issues as such exercise is only to avoid piece-meal examination of witnesses.

On the other hand, learned counsel appearing for the contesting respondents submitted that once the petitioner/plaintiff had led even part of the evidence on the issues even though initial onus thereof was on the defendants, he is not entitled to lead any evidence in rebuttal.

Learned counsel for the parties have relied upon the judgments in **T.R.S.Mani Sastrigal alias Mani Sastrical Vs. T.R.Suryanarayanan AIR 1996 Madras 152, Surjit Singh and others Vs. Jagtar Singh and other 2007(1) RCR (Civil) 537 and Jagdev Singh and others Vs. Darshan Singh and others (2007-2) Punjab Law Reporter 315.**

I have gone through the judgments cited above. In Jagdev Singh's case (supra), a Division Bench of this Court held that plaintiff cannot as a matter of right lead evidence in rebuttal on the issue, the onus to prove of which is on him. To similar effect is the another judgment of the Division Bench in Surjit Singh's case (Supra).

In **Naranjan Singh Vs. Ajaib Singh and another** 2006 (1) PLR 789, this Court while considering a similar issue held that by fiction of law, the defendant is to be treated as plaintiff for the issues, the onus of which is on him and the plaintiff has right to rebut the evidence led by the defendants on those issues and there is no requirement of any law that the plaintiff is required to even reserve his right to controvert the evidence of defendants. The issue has also been gone into by the Rajastan High Court in **L.M.P. Precession Engineering Co. (P) Ltd. Vs. Ram Narayan AIR 2004 Rajasthan 37** wherein it was held that in a suit where a number of issues are framed and the onus thereof is on either party and in case while discharging his onus on certain issues, the plaintiff touches some issues, the onus whereof is on the defendants, it cannot be said that plaintiff has led his evidence on those issues, thereby depriving him to lead evidence in rebuttal. Each case has to be considered on its own facts. The relevant extract of the

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judgment in **L.M.P.Precession Engineering Co. (P) Ltd.'s** case (supra) is as under:-

> "It will be worthwhile to mention here that the trial Court framed total six issues and burden to prove two issues was upon the plaintiff, which are (i) whether the Court has jurisdiction to hear the suit and another is (ii) whether the plaintiff is entitled for decree of rendition of account against the defendant. A bare perusal of the averments made in the plaint and particularly the relief claimed by the plaintiff in the suit, it is clear that the entire relief of the plaintiff is only that the plaintiff is entitled for the decree for rendition of account against the defendant and consequently, the plaintiff is entitled for the amount, which is found due in the defendant of the plaintiff. This issue covers the entire suit itself, which includes all the facts mentioned in plaint on the basis of which plaintiff becomes entitled to relief. It appears from the detail evidence of the plaintiff that the plaintiff led evidence in detail to prove this issue and in that sequence he narrated the entire sequence on the basis of which the plaintiff is claiming the relief against the defendant. When such a situation arises where there are two sets of issues; one putting burden upon the plaintiff to prove the issue and another putting burden upon the defendant and in that situation, if some of the subjects required to be covered to prove issue by the plaintiff by giving evidence or even for the purpose of making the evidence clear so that the case may be well understood by the Court and to make the things clear, if plaintiff leads evidence to prove his case, in all those cases, it is not possible to hold that the plaintiff has touched the issues, burden of which was upon the defendant. It depends upon the facts of each case.
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> The proving of an issue by the defendant depends upon the specific plea taken in defence by the defendant and that burden can be discharged by the defendant by proving his case by his evidence and then the plaintiff can rebut those issues of the

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> defendant by leading evidence. Sometime, it happens that one issue is framed placing burden upon the plaintiff and another issue may be an issue of rebuttal of the issue framed for plaintiff, then in that case, the plaintiff if leads evidence to prove his case, it is not necessary to say that he led evidence to meet with the defence of the defendant because of the reason that the plaintiff has right to prove his case and for that purpose he may no take risk of not proving his case on his assumption that the facts pleaded may be treated as admitted by the defendant by the Court, which may be disputed or may be interpreted subsequently in otherwise way on the basis of the pleas of the defendant. Therefore, what evidence the plaintiff has led on the issues and whether the plaintiff touched the issue of the defendant depends upon the facts of the case and no formula can be provided for deciding the matter."

After hearing the learned counsel for the parties and considering the legal position as discussed above, I find merit in the contention raised by learned counsel for the petitioner. In the present case, it is not in dispute that the onus of the issues No.5 and 12 is on the defendants/respondents. If during the course of leading evidence on the issues, the onus whereof was on the plaintiff, any statement was made with regard to issues the onus of which is on the defendants, the same shall not mean that plaintiff had infact led or concluded his evidence on those issues as it is only after the defendant has led his evidence that plaintiff will come to know the same and get an opportunity to rebut the same. Plaintiff cannot presuppose the evidence which is to be led by the defendant on the issues, the onus whereof is on him. Even otherwise procedural law is subservient to the cause of justice.

Accordingly, the petition is allowed and the petitioner is permitted to lead evidence in rebuttal on issues the onus whereof was on the defendants.

August 27, 2007 **(Rajesh Bindal)**
Pka **Judge**

(Refer to Reporter)

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